IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4944 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOPALKRISHNA EDUCATION TRUST

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR PRASHANT MAKAND for MR YOGESH S LAKHANI for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. Shri Makand, counsel for the petitioner, states that the petitioner filed a Civil Application for amendment of the Special Civil Application which is not placed on the Board. He further stated that this matter may be deferred as the Civil Application may be first

decided. The learned counsel for the petitioner is unable to give out the date on which the Civil Application is filed as well as its regular or stamp number. The counsel for the petitioner is asked to give the copy of the application which is accordingly given. This Civil Application is for amendment of the Special Civil Application and I will consider the averments made therein.

2. Heard the learned counsel for the petitioner.

3. The petitioner-trust submitted an application to the respondent, Gujarat Secondary Education Board, on 26th July, 1991 and prayed therein for grant of registration to the Secondary School at Village Talagana in its favour. This application was came to be rejected by the respondent-board under its order dated 18th November, 1992 on the ground that there is no necessity to open a new school in the proposed area (Talagana village). Against this order of the board, the petitioner filed an appeal before the State Government and the same was also rejected on 7th April, 1995. The petitioner filed a Revision Application, but that has been dismissed on 01/12/1997 on the ground that there is no provision for filing of the Revision Application. Hence, this Special Civil Application before this Court.

4. In the Civil Application, the petitioner has given out the fact that under the similar facts and circumstances, registration has been granted for a Secondary School in Nilakha village. In the Civil Application, some other facts have been stated that there are villages Isra and Talagana situated in heavy flood affected areas. It is further been stated that at Village Isra, a Secondary school is there, but because of biggest river of Saurashtra, Bhadar, going across to the village, it is impossible to go through this river in the monsoon.

5. The learned counsel for the petitioner contended that in response to the advertisement given by the respondent-Board inviting applications for opening secondary school, the petitioner applied for grant of registration and the Board rejected the application on the ground which is wholly not tenable. Once a need is felt for opening of the secondary school at the village, then, the Board could not have rejected such application on the ground of no need of opening of the school. It has next been contended that the appellate authority has also made error in rejecting the application of the petitioner. Lastly, it is contended that the revision

application is maintainable and it has wrongly been rejected by the State Government.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

7. Whether in a village, opening of the secondary school is necessary or not is a matter for the consideration of the Board and the State Government and where both the authorities, concurrently held that there is no need to open the secondary school at village, to their decision, no exception can be made under Article 226 or 227 of the Constitution of India. The petitioner is not a person to decide that in the village, school should have been there. To run a school is not a business or factory or profession. The petitioner is a public trust and I fail to see if it really desires to serve the peoples, there are many fields to serve needy, poor and downtrodden persons. Education is not only one field through which a public trust can serve the needy and poor peoples. Imparting the education through educational institutions may be a good work, but it is not the only work for the trust. The way and the manner in which the attempts are made by the petitioner for grant of the registration to the school, is difficult to appreciate.

8. The petitioner along with the Civil Application filed a map of the building available with it for proposed school. If we go by this map, it is certainly, not a bona fide and real approach of the petitioner to impart education to the needy persons in the village. It is nothing but only seems to be opening of a shop (education shop). In the building, there are only two rooms of the size 20 ft. x 15 ft. which are even hardly in this days sufficient for a class-room. How it can be taken to be an adequate building for opening of the secondary school ? The total area of the land is 90 ft. x 60 ft., out of which about 43' x 26'. is the construction portion and remaining area is stated to be open. It is difficult to accept this open area adequate and sufficient for playground. In these facts, what the peoples are saying and alleging that in the State, education is a profitable business, to certain extent appears to be correct. In the facts of this case, leaving apart all other questions, the prayer made by the petitioner to run school could not have been granted looking to this building available with it and rightly, it has not been granted. The purpose and object of the trust appears to be not to impart education, but to open

an education shop.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. As nobody puts appearance for the respondents, no order as to costs.

(S.K. Keshote, J.)
(kamlesh)